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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 KENNETH JOHN FREEMAN,

13 Defendant.

CR-07-6008-LRS

United States' Notice of  
Review of PreSentence  
Investigation Report

15 Plaintiff United States of America, by and through James A. McDevitt,  
16 United States Attorney for the Eastern District of Washington, Stephanie J. Lister,  
17 Assistant United States Attorney for the Eastern District of Washington, Karin J.  
18 Immergut, United States Attorney for the District of Oregon, and Gary Sussman,  
19 Assistant United States Attorney for the District of Oregon, submits herewith its  
20 Notice of Review of the PreSentence Investigation Report, dated February 9,  
21 2009.

22 **INTRODUCTION**

23 The Defendant Freeman has plead guilty to two counts of Production of  
24 Child Pornography and one count of Interstate Transportation of a Minor for the  
25 Purpose of Engaging in Unlawful Sexual Activity. The United States has  
26 reviewed the PreSentence Investigation Report (hereinafter PSR) and notes the  
27 following:  
28

**A. Factual Errors or Omissions.**

After review of the PSR, the Government believes the U.S. Probation Officer did an extraordinary job writing the PSR and accurately setting forth the facts of this fairly complicated case. The Government recognizes that the following suggested “corrections” are very minor.

- Pg.4, ¶ 1- Defendant was charged on December 8 (not 15), 2006, for the offense of unlawful flight to avoid prosecution (*not the later Indictment charges of Production and Transportation of Child Pornography*).
- Pg.9, ¶ 11- Mr. Freeman began to sexually abuse KNF on the Saturday of (not *before*) Mother’s Day weekend in 2000.
- Pg. 11, ¶ 20- Evidence that Freeman distributed images of child pornography over the Internet is not the only evidence of interstate transportation. Defendant also produced images of child pornography in Oregon, which he later transported in interstate commerce to the State of Washington.

**B. The Sentencing Guideline Calculations.**

**1. Production of Child Pornography.**

The U.S. Probation Office has determined Defendant’s base offense level, for both the charges of Production of Child Pornography in the Eastern District of Washington and the District of Oregon, pursuant to the United States Sentencing Guidelines (U.S.S.G.) § 2G2.1(a), to be 27. PSR ¶ 67 and 75. The U.S. Probation Office has determined that the facts of the case warrant a number of specific characteristic enhancements for Production of Child Pornography:

- The victim had not attained the age of 12 years, U.S.S.G. § 2G2.1(b)(1)(A). PSR ¶ 68 and 76. (+4);
- The Defendant was a parent of the victim, U.S.S.G. § 2G2.1(b)(2). PSR ¶ 69 and 77. (+2);

- The Defendant willfully obstructed or impeded the administration of justice, U.S.S.G. § 3C1.1. PSR ¶ 72 and 80. (+2).

The Government concurs with the calculations included in the PSR that Defendant's adjusted offense level for Production of Child Pornography is 35. PSR ¶ 73 and 81.

## **2. Transportation of a Minor for the Purpose of Engaging in Unlawful Sexual Activity.**

The U.S. Probation Office has determined Defendant's base offense level, for Transportation of a Minor for the Purpose of Engaging in Unlawful Sexual Activity, arising out of the charges in the District of Oregon, pursuant to the United States Sentencing Guidelines (U.S.S.G.), cross reference § 2G1.1(c)(1), to be 27. U.S.S.G. § 2G2.1(a). PSR ¶ 90-91. The U.S. Probation Office has determined that the facts of the case warrant a number of specific characteristic enhancements for this offense:

- The victim had not attained the age of 12 years, U.S.S.G. § 2G2.1(b)(1)(A). PSR ¶ 92. (+4);
- The Defendant was a parent of the victim, U.S.S.G. § 2G2.1(b)(2). PSR ¶ 93. (+2);
- The Defendant willfully obstructed or impeded the administration of justice, U.S.S.G. § 3C1.1. PSR ¶ 96. (+2).

The Government concurs with the calculations included in the PSR that Defendant's adjusted offense level for Transportation of a Minor for the Purpose of Engaging in Unlawful Sexual Activity is 35. PSR ¶ 97.

## **3. Grouping and Acceptance of Responsibility.**

The Government concurs with the grouping calculations included in the PSR that Defendant should receive a three level increase to the adjusted offense level of 35, which results in a combined adjusted offense level of 38. PSR ¶ 97.

1 Pursuant to Defendant's timely acceptance of the Government's plea offer,  
2 the Government concurs with the PSR that Defendant qualifies for a three-level  
3 reduction in his offense level based upon acceptance of responsibility, pursuant to  
4 U.S.S.G. § 3E1.1. Defendant's resulting total offense level is 35. PSR ¶ 102.  
5 Defendant has a criminal history category of I. PSR ¶ 117. Based on a total  
6 offense level of 35 and a criminal history category of I, Defendant's advisory  
7 U.S.S.G. range is 168 to 210 months in prison. PSR ¶ 162. The Government  
8 agrees that a period of not more than 3 years of supervised release may be imposed  
9 on each of the three counts of conviction. PSR ¶ 165.

10 **B. Impact of the Plea Agreement.**

11 Pursuant to the Plea Agreement, the Defendant and the United States have  
12 agreed to recommend that a seven (7) level upward departure is appropriate. (Plea  
13 Agreement, pg. 19, ¶ 10). This would increase the Defendant's offense level to 42  
14 and the guideline range would then be 360 months to life. PSR ¶ 164. The Plea  
15 Agreement also provides that the Defendant and the United States have agreed to  
16 recommend that the Court impose a sentence of 50 years, pursuant to Fed.R.  
17 Crim.P. 11(c)(1)(C). (Plea Agreement, pg. 20, lines 15-23). A separate  
18 Sentencing Brief will be filed by the United States to address the appropriateness  
19 of a seven (7) level upward departure and a 50 year sentence.

20 Also pursuant to the Plea Agreement, the Defendant and the United States  
21 have agreed to recommend that the Court impose a three year term of supervised  
22 release with a number of special conditions. (Plea Agreement, pg. 21, ¶ 13 and  
23 PSR pgs. 7-9.

24 The United States will not present any information on the Defendant's  
25 ability to pay a fine. However, as part of the Plea Agreement the Defendant has  
26 agreed to pay restitution to Gaye Peale (guardian/ mother of victim K.N.F.) in the  
27 total amount of \$10,856.93. This includes restitution owed to date for past  
28 counseling (\$180.00) and travel expenses to attend court hearings (\$676.93). The

1 Defendant has also agreed to pay, upon proof of receipt of counseling charges, up  
2 to \$10,000 for future counseling for victim K.N.F.. The Judgment and  
3 Commitment Order should direct these payments be made to Gaye Peale  
4 (guardian/ mother of victim K.N.F.). (Plea Agreement, pg. 22, ¶ 14).

5 Additionally, the United States and Defendant have agreed that Defendant  
6 will pay the \$300 special penalty assessment at or before sentencing. (Plea  
7 Agreement, pg. 24, ¶ 15).

8 **C. Sentencing Hearing.**

9 The victims; K.N.F., Gaye Peal and Chris Peal all wish to address the Court  
10 at the time of sentencing. The United States presently has no plans to introduce  
11 any exhibits at the sentencing hearing.

12 DATED February 18, 2009.

13  
14 James A. McDevitt  
United States Attorney

15 s/Stephanie J. Lister

16 Stephanie J. Lister  
17 Assistant United States Attorney

18 I hereby certify that on February 18, 2009, I electronically filed the  
19 foregoing with the Clerk of the Court using the CM/ECF System which will send  
20 notification of such filing to the following, and/or I hereby certify that I have  
21 mailed by United States Postal Service the document to the following non-  
22 CM/ECF participant(s):

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